IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.7153 OF 2006

M/s.Shantilal Jamnadas Textiles Pvt.Ltd...Petitioners.

V/s.

The Union of India & Ors. ..Respondents.

Mr.Prakash Shah i/b. PDS Legal for petitioners.

Mr.Vijay Kantharia with Usha Kejriwal for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 20TH DECEMBER, 2006.

P.C. :-

. Heard Mr.Shah in support of the petition. Mr.Kantaria appears for the respondents. Rule, returnable forthwith. Reply has been filed by the respondents.

2. The grievance of the petitioner is that an order in original dated 29th March, 2004 has been passed by respondent No.4 i.e. Joint Commissioner of Central Excise, Vapi imposing the duty liability of Rs.18,97,350/- and penalty of Rs.1,00,000/-. This order has been passed when the petitioner was not heard. That order has been left undisturbed in an internal appeal and when further appeal was filed to the Tribunal, the Tribunal by its order dated 3rd

August, 2004 has directed the petitioner to deposit the amount under order in original to enable it to proceed with the appeal. All these three orders are under challenge in the present petition.

3. The submission of Mr.Shah is that at the relevant time the peitioner’s factory was sealed by G.I.D.C. and that is the reason why nobody was present when the order in original was passed.

4. The respondents have filed the reply of one Mr.Paul Fernandes, Deputy Commissioner, Central Excise. He has stated that the service was effected and they have the acknowledgement and in spite of that nobody was present when the order in original was passed.

5. We have noted the submissions of both the parties. The fact remains that the petitioner’s factory has been sealed for quite sometime and that nobody was present on their behalf. There appears to be a controversy as to whether the letter asking the petitioners to attend for personal hearing was served. Be that as it may, the petitioners’ submissions have been considered on merits in the internal appeal and it is that order which is under challenge before the Tribunal where the Tribunal has directed this petitioner to deposit the amount as per order in

original. As noted above, the petitioners' factory has been closed for quite sometime. This aspect ought to have been considered by the Tribunal. The submission of the petitioner on merits as well as on law can be gone before the Tribunal and the petitioner must get an opportunity to address them without their being any insistence to deposit the amount as directed in the order in original, particularly considering the hardship inasmuch as the factory of the petitioners has been closed for quite some time.

6. In the circumstances, we set aside the order of the Tribunal and restore the proceedings before the Tribunal for proceeding further. The Tribunal will not insist upon the amount to be deposited as directed in the order in original.

7. Rule made absolute in terms of above order with no order as to costs.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)